



March 17, 2021

The Honorable Charles Schumer
Senate Majority Leader
322 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
317 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House
1236 Longworth House Office Building
United States House of Representatives
Washington, DC 20510

The Honorable Kevin McCarthy
House Minority Leader
2468 Rayburn House Office Building
United States House of Representatives
Washington, DC 20510

RE: Support For SAFE Banking Act Legislation

Dear Majority Leader Schumer, Senate Minority Leader McConnell, Speaker Pelosi, and House Minority Leader McCarthy:

We write to you today in support of the SAFE Banking Act, legislation that will permit banks to provide services to state regulated marijuana businesses.

An essential component in combating illicit activity of any type is to have the ability to track funds and know the sources of funds in order to shine a light on criminal elements. The Financial Crimes Enforcement Network (FinCEN) first issued guidance clarifying expectations of financial institutions serving cannabis businesses in 2014. Some policymakers have expressed concern that this guidance is insufficient. However, several financial institutions have successfully and compliantly banked cannabis businesses utilizing this guidance, and more could be done simply by filling some gaps:

- **Interstate Commerce:** Moving funds across state lines with different regulatory regimes is normal for any business. By incorporating entities in every state, cannabis companies can comply with the FinCEN guidance by banking funds separately by state. Allowing one company to bank with one financial institution is normal business and increases the ability of the financial institution to monitor for illicit activities and fulfill Bank Secrecy Act (BSA) obligations. However, multiple bank accounts increase the risk of co-mingling, illicit activities, etc.
- **Legacy Cash:** Legacy cash has been around for decades from the illicit market. Financial institutions are trained already to pinpoint such funds and reject them from the financial system. Legacy cash is not so difficult to pinpoint given the strict nature of state regulations for monitoring product. Highly regulated

states are key. A lack of banking or trained oversight for financial institutions by regulators will allow funds to move into the system. However, regulators fear formal training due to the illegal aspect of cannabis. They must be allowed to train themselves and then oversee the financial institutions consistently.

- **Ancillary Businesses:** The concern at present are ancillary businesses entering the industry such as crypto currency, fintech, and those looking to capitalize on the industry's lack of banking, require a higher level of monitoring. However, it is not clear how many degrees of separation are needed before additional scrutiny is no longer required and additional guidance is needed.
- **Investment Funds:** While investment funds have strong BSA experience, the FinCEN guidance strictly requiring "no illicit funds" scares many away. In particular, funds returned to investors must come through the financial system with full accountability and transparency. Investors who do not verify the banking arrangements of their transactions put themselves at risk.
- **Foreign Activities/Funds:** Today, cannabis related funds cross borders through unknown channels such as hidden bank accounts, shell businesses, digital currency, etc. Foreign capital has flowed into the U.S. cannabis industry and investment vehicles need legal way to return funds to foreign investors. Although foreign funds related to normal businesses do not require Suspicious Activity Reports (SARs), it is unclear whether SARs filings apply to foreign funds related to cannabis businesses. This often leads to regulators recommending SARs on any cannabis-related funds, needlessly overloading the system. Further, BSA requirements on "source of funds" should clarify that additional due diligence is needed on foreign activity. This would make financial institutions more comfortable accepting foreign funds on cannabis transactions.

In May of 2019, recognizing the need for such legislation, a bipartisan group of 38 state and territorial attorneys general provided a letter of support to Congressional leadership urging passage of the SAFE Banking Act or similar legislation that would provide a safe harbor for depository institutions. Support of such legislation has been in the interest of public safety, financial transparency, and the rule of law.

It is for these reasons that the Policy Center for Public Health & Safety strongly supports the passage of the SAFE Banking Act or similar legislation.

Respectfully,

Fred Niehaus
Chair, PH&S

